

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Madeleine Clayton 06/17/2002  
Departmental Forms Clearance Officer  
Office of the Chief Information Officer  
14th and Constitution Ave. NW.  
Room 6086  
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of the reinstatement of an information collection received on 04/17/2002.

TITLE: Atlantic Highly Migratory Species Observer  
Notification Requirement

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE  
OMB NO.: 0648-0374  
EXPIRATION DATE: 06/30/2005

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	0	0	0
New	8,936	295	4
Difference	8,936	295	4
Program Change		295	4
Adjustment		0	0

TERMS OF CLEARANCE: None

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OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of  
Information and Regulatory Affairs

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# PAPERWORK REDUCTION ACT SUBMISSION

**Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated  5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No  6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) ( <i>if applicable</i> )	
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

**SUPPORTING STATEMENT  
HIGHLY MIGRATORY SPECIES (HMS) OBSERVER NOTIFICATION  
OMB CONTROL NO. 0648-0374**

**A. JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary.**

This Supporting Statement is submitted as part of a Paperwork Reduction Act information collection for the mandatory observer coverage program of permitted vessels in HMS fisheries. A proportion of permitted vessels in the Atlantic sharks, swordfish and tunas fisheries would be selected for at-sea observers. Additionally, NMFS would select a proportion of vessels annually for observer coverage in the recreational fisheries for tunas (permitted vessels) and for HMS other than tunas, where permits are not required. Selection of non-permitted vessels would be based on tournament rosters or dockside interviews and participation would be voluntary.

This collection is an extension of a currently-approved collection. This collection includes observer notification requirements for swordfish, shark, and tuna vessels. Therefore, this collection is a comprehensive collection for observer notification requirements for all HMS. Under the information collection, the observer notification requirements are consolidated and consistent for all HMS.

NMFS has management authority over Atlantic highly migratory species (HMS) for U.S. Atlantic, Gulf of Mexico and Caribbean waters. The Secretary of Commerce (Secretary) holds responsibility for managing domestic allocations in HMS fisheries under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 et seq.) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 et seq.). The ATCA implements recommendations of ICCAT, of which the United States is a member. Section 971 d.(c)(3) of ATCA provides the statutory authority to require the collection of information necessary to implement the recommendations of International Commission for the Conservation of Atlantic Tunas (ICCAT). Congress reauthorized the Magnuson-Stevens Act in October 1996 by passing the Sustainable Fisheries Act (SFA). Section 303(e) of the Magnuson-Stevens Act, as amended by the SFA, requires the Secretary to report annually to Congress and the regional fishery management councils on the status of the fisheries and to identify those fisheries that are overfished or are approaching an overfished condition.

As a member nation of ICCAT, the United States is required to take part in the collection of biological and catch and effort statistics for research purposes. In addition to this requirement, the United States, as one of the three member nations fishing for tunas in the Western Atlantic Ocean, must abide by the specific quota assigned to it by ICCAT. Thus, collection of information serves two purposes of ICCAT: (1) it provides stock assessment and research information, (2) it monitors the catch so as not to exceed the country quota. Of particular interest is the documentation of bycatch statistics, including discard mortality. Besides quotas,

other conservation measures include the closure of spawning areas such as the Gulf of Mexico, to any directed fishery.

One of the major responsibilities of NMFS is to allocate HMS quotas assigned to the U.S. by ICCAT among numerous and competing user groups, and to generally monitor HMS covered by ICCAT. As management falls under the Magnuson-Stevens Act as well as ATCA, and the National Environmental Protection Act (NEPA), data and analyses on the catch of the U.S. HMS fisheries constitute an integral part of the basis for rulemaking, particularly in preparing the mandatory Regulatory Impact Reviews (RIR), Environmental Assessments/Impact Statements (EA/EIS), and other documentation associated with management. In addition, observers may document fishing techniques and patterns as part of the background information on the fishery itself. Thus, the observer program will provide essential information for management of HMS fisheries in the United States, particularly in terms of total quota and allocation decisions which follow ICCAT recommendations and legal requirements (respect traditional fishing patterns and consider the participation of various user groups).

The purpose of the collection of information contained in the observer program for HMS is to comply with the requirements of the Magnuson-Stevens Act and with the United States' international obligations under ATCA.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used.**

The information collected in the observer program will be used by NMFS to monitor the U.S. fishing activities in relation to the quota, thereby ensuring that the United States complies with its international obligations to ICCAT. Other provisions of the domestic regulations can be monitored through this collection of information, such as compliance with area closures, fishing seasons, bycatch restrictions, and subquotas by gear type and/or user group. This information will also provide detailed catch and effort data which may be used to assess the status of the HMS resources. Assessments are conducted and presented to ICCAT every few years. These data provide the basis for ICCAT management recommendations which become binding on member nations. In addition, the observer program will provide essential information for domestic management policy and rulemaking.

The observer program will operate as follows: All vessels fishing for, or incidentally taking Atlantic HMS, be they commercial or recreational, will be eligible for selection. Selection of non-permitted vessels would be based on tournament rosters or dockside interviews and participation would be voluntary.

If NMFS determines that vessels targeting a certain species, size class and/or area should be studied via an observer program, a statistically-based sample of the fishing vessels would be selected by NMFS scientists, and selected vessels would need to notify NMFS by telephone or in writing of the time and place of departure for future fishing trips. After this notification, NMFS will decide whether an observer is available to accompany the vessel for that fishing trip. If an observer is dispatched to the vessel, the observer will collect information to characterize the

vessel, nature of the fishing trip and type of fishing gear, will record effort and catch during the course of the trip and will note offloading information after the trip. Public burden for this request thus consists only of the initial notification of a planned fishing trip.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

This collection of information does not lend itself to the use of automated, electronic, mechanical, or other technological techniques.

**4. Describe efforts to identify duplication.**

There is no duplication with other collections.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

Nearly all vessels in the HMS fisheries are categorized as small businesses. The collection will not have a significant impact on small businesses, and no special modifications of the requirements were considered necessary to accommodate the needs of small businesses.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

If the collection were not conducted or were conducted less frequently, the accuracy of stock assessments and estimates of bycatch would be diminished. Observer coverage and/or notification less than that required for a specified level of statistical precision will render expanded estimates of total effort, catch and bycatch less reliable. Notification prior to every trip for a selected vessel is essential for NMFS to maintain sampling proportions which are representative of the fleet at large.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

The collection would not be conducted in a manner inconsistent with OMB guidelines, except that notification could be more frequently than quarterly because NMFS needs to be informed of all trips in order to coordinate observer placement.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and**

**recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

A Federal Register Notice (copy attached) solicited public comments on this collection. None were received.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

No payments or gifts are to be offered as part of this information collection.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

It is Agency policy not to release confidential data, other than in aggregate form, as section 402(b) of the Magnuson-Stevens Fisheries Conservation and Management Act protects (in perpetuity) the confidentiality of those submitting data. Whenever data are requested, the Agency ensures that information identifying the pecuniary business activity of a particular vessel operator is not identified.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No information of a sensitive nature is requested.

**12. Provide an estimate in hours of the burden of the collection of information.**

In 2001, there were approximately 9,849 commercial permit holders in the Atlantic tuna fishery. Coverage for the commercial tuna fleet (98 vessels) would be approximately 1 percent. The information obtained would support other regulations as well as the Sustainable Fisheries Act. It is estimated that the average number of trips for all gear types in the commercial tuna fishery would be 50 trips annually. The total number of trips requiring notification in the commercial tuna fishery would be  $98 \times 50 = 4,900$  trips. If a vessel is selected for observer coverage, NMFS must be notified before commencing any fishing trip that may result in the harvest of Atlantic HMS. Notification time is estimated at .033 hours per response. Therefore, in the commercial Atlantic tuna fishery, the total number of respondents would be 98, the total number of responses would be 4,900, and the total burden would be  $4,900 \times .033$  hours = 162 hours.

The total number of vessels fishing for swordfish and sharks in the U.S. exclusive economic zone (EEZ) is estimated at approximately 642, based on preliminary numbers of permits to be issued under a directed and indirect limited access program for swordfish and sharks. NMFS target for observed trips is 5 percent. Due to scheduling conflicts and availability of observers, it would be necessary to “over sample” vessels to ensure that the 5 percent target is reached. Due to protected species interactions in the swordfish and shark fisheries, a biological opinion issued



under section 10 of the Endangered Species Act requires a minimum actual level of coverage of 5 percent; thus, over sampling is necessary. NMFS anticipates selecting 10 percent (64 vessels) of these vessels for observer coverage. It is estimated that the average number of trips for all gear types in the commercial swordfish and shark fisheries would be 24 trips annually. The total number of trips would be  $64 \times 24 = 1,536$  trips. If a vessel is selected for observer coverage, NMFS must be notified before commencing any fishing trip that may result in the harvest of Atlantic HMS. Notification time is estimated at .033 hours per response. Therefore, in the commercial Atlantic shark and swordfish fishery, the total number of respondents would be 64, the total number of responses would be 1,536, and the total burden would be  $1,536 \times .033$  hours = 51 hours.

Additionally, NMFS would select approximately 50 vessels annually for observer coverage in the Atlantic HMS recreational fisheries. Selection of non-permitted vessels would be based on tournament rosters or dockside interviews and participation would be voluntary. It is estimated that the average number of trips for all gear types in the recreational HMS fishery would 50 trips annually. The total number of trips requiring notification in the recreational HMS fishery would be  $50 \times 50 = 2,500$  trips.

If a vessel is selected for observer coverage, NMFS must be notified before commencing any fishing trip. Notification time is estimated at 2 minutes (.033 hours) per response. Therefore, in the recreational HMS fishery, the total number of respondents would be 50, the total number of responses would be 2,500, and the total burden would be  $2,500 \times .033$  hours = 82 hours.

For all HMS fisheries, the annual burden for observer notification is estimated at 295 hours for 8,936 responses by 212 respondents.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.**

There will be no start-up costs for respondents as a result of this collection. Notification costs by phone, fax or letter are estimated at \$0.50 per response x 8,936 responses, a total of \$4,468 per year.

**14. Provide estimates of annualized cost to the Federal government.**

There is no cost to the Federal Government associated with notification.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

The hours and costs are a program change for reinstatement of an expired approval. Previously-approved hours and costs were adjusted to reflect the current number of vessels; the percentage of vessels selected and response times are unchanged.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The results will not be published.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

There is no form under this requirement.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

No exceptions are requested.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) in height for all other vessels.

(2) The owner or operator of a vessel for which a permit has been issued under §635.4 must keep the vessel's number clearly legible and in good repair and ensure that no part of the vessel, its rigging, its fishing gear, or any other material on board obstructs the view of the vessel's number from an enforcement vessel or aircraft.

(c) *Gear identification.* (1) The owner or operator of a vessel for which a permit has been issued under §635.4 and that uses a handline, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas permit number on each float attached to a handline or harpoon and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or arabic numerals in a color that contrasts with the background color of the float or high-flyer.

(2) An unmarked handline, harpoon, longline, or gillnet, is illegal and may be disposed of in an appropriate manner by NMFS or an authorized officer.

(3) In addition to gear marking requirements in this paragraph (c)(1), provisions on gear marking for the southeast U.S. shark gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in §229.32(b) of this title.

**§ 635.7 At-sea observer coverage.**

(a) *Applicability.* NMFS may select for observer coverage any vessel that has an Atlantic HMS, tunas, shark or swordfish permit issued under §635.4. Vessels permitted in the HMS Charter/Headboat and Atlantic Tunas Angling and Charter/Headboat categories will be requested to take observers on a voluntary basis. When selected, vessels issued any other permit under §635.4 are required to take observers on a mandatory basis.

(b) *Selection of vessels.* NMFS will notify a vessel owner, in writing, when his or her vessel is selected for observer coverage. Vessels will be selected to provide information on catch, bycatch and other fishery data according to the need for representative samples.

(c) *Notification of trips.* The owner or operator of a vessel that is selected under paragraph (b) of this section must notify NMFS, at an address designated by NMFS, before commencing any fishing trip that may result in the incidental catch or harvest of Atlantic HMS. Notification procedures and information requirements such as expected gear deployment, trip duration and fishing area will be specified in a selection letter sent by NMFS.

(d) *Assignment of observers.* Once notified of a trip, NMFS will assign an observer for that trip based on current information needs relative to the expected catch and bycatch likely to be associated with the indicated gear deployment, trip duration and fishing area. If an observer is not assigned for a fishing trip, NMFS will issue a waiver for that trip to the owner or operator of the selected vessel. If an observer is assigned for a trip, the operator of the selected vessel must arrange to embark the observer and shall not fish for or retain any Atlantic HMS unless the NMFS-assigned observer is aboard. Notwithstanding the above procedures for assignment or waiver, at no time shall a person aboard a vessel issued a directed shark ILAP or LAP under §635.4 fish for Atlantic sharks with a gillnet or possess sharks on board a vessel issued a directed shark ILAP or LAP with a gillnet on board unless a NMFS-approved observer is aboard the vessel.

(e) *Requirements.* The owner or operator of a vessel on which a NMFS-approved observer is embarked, regardless of whether required to carry the observer, must comply with §§600.725 and 600.746 of this chapter and--

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of

## Fishery Conservation and Management

## § 635.16

messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999]

### Subpart B—Limited Access

#### § 635.16 Limited access permits.

As of July 1, 1999, the only valid commercial vessel permits for shark and swordfish are those that have been issued under the limited access criteria specified in this section. If the Federal commercial shark permit issued to the vessel owner prior to July 1, 1999, was based on the qualifications of the operator, then a shark limited access permit will be issued to the qualifying vessel owner, subject to the provisions in this part, with the requirement that the operator must be on board the vessel to fish for, take, retain, or possess Atlantic sharks in state or Federal waters. This requirement expires May 30, 2000.

(a) *Eligibility requirements for ILAPs—*

(1) *Directed permits.* To be eligible for a directed ILAP in the shark or swordfish fishery, a vessel owner must demonstrate past participation in the respective fishery by having—

(i) Been the owner of a vessel that was issued a valid permit for the respective fishery at any time from July 1, 1994, through December 31, 1997.

(ii) Documented shark or swordfish landings from the respective federally permitted vessel that he or she owned, of at least \$5,000 per year in value or in number per year as follows—

(A) One hundred and two sharks per year for any 2 calendar years, from January 1, 1991, through December 31, 1997, provided the landings after July 1,

1993, occurred when the permit was valid, or

(B) Twenty-five swordfish per year for any 2 calendar years, from January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid.

(iii) Been the owner of a vessel in the respective fishery that—

(A) Had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or

(B) Had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998.

(2) *Incidental catch permits.* To be eligible for an incidental ILAP in the shark or swordfish fishery, a vessel owner must demonstrate past participation in the respective fishery by having—

(i) Been the owner of a vessel that was issued a valid permit for the respective fishery at any time from July 1, 1994, through December 31, 1997; and

(ii) Documented landings from the respective federally permitted vessel that he or she owned of at least—

(A) Seven sharks from January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid; or

(B) Eleven swordfish from January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid; and

(iii) Been the owner of a vessel in the respective fishery that—

(A) Had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or

(B) Had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998; and

(iv) Met either the gross income from fishing or the gross sales of fish requirement specified in paragraph (a)(3)(i) or (ii) of this section; or

(v) Been the owner of a vessel that had a permit for Atlantic tuna in the Incidental category at any time from January 1, 1998, through December 31, 1998; or

(vi) Been the owner of a vessel that is eligible for a directed or incidental ILAP for swordfish (incidental shark ILAPs only).

(3) *Handgear permits.* To be eligible for a swordfish handgear ILAP—

No domestic interested party in the sunset review of this suspended investigation responded to the notice of initiation by the December 18, 2001, deadline (see section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*").

#### Determination To Terminate

Pursuant to section 751(c)(3)(A) of the Act and § 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department will issue a final determination, within 90 days after the initiation of the review, terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, December 18, 2001, we are terminating the suspended antidumping investigation of sodium azide from Japan.

#### Effective Date of Termination

The termination of the suspended investigation is effective as to all entries, or withdrawals from warehouse, of the subject merchandise on or after January 7, 2002.

Dated: January 4, 2002.

**Bernard T. Carreau,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 02-767 Filed 1-10-02; 8:45 am]

BILLING CODE 3510-25-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 010802A]

#### Proposed Information Collection; Comment Request; Fishing Capacity Reduction Program Buyback Requests

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506 (c)(2)(A)).

**DATES:** Written comments must be submitted on or before March 12, 2002.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael A. Sturtevant, National Marine Fisheries Service, Financial Services Division, Room 13334, 1315 East West Highway, Silver Spring, MD 20910 (301-713-2390).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

NOAA has established a program to reduce excess fishing capacity by paying fishermen to (1) surrender their fishing permits or (2) both, surrender their permits and either scrap their vessels or restrict vessel titles to prevent fishing. Buybacks can be funded by a Federal loan to the industry or by direct Federal or other funding. Depending upon the type of buyback involved, the program can entail the submission of buyback requests by industry, the submission of bids, referenda if fishery participants, and reporting of the collection of fees to repay a Federal loan. For buybacks involving State-managed fisheries, the State may need to develop the buyback plan and comply with other information requirements.

In its request for renewed Paperwork Reduction Act approval NOAA will also request the merger of referenda requirements currently approved under 0648-0413 and the addition of a provision that would allow the public 30 days to advise of any holder or owner claims that conflict with accepted bidders' representations about reduction permit ownership or reduction vessel ownership.

##### II. Method of Collection

Paper forms or submission are primarily used.

##### III. Data

*OMB Number:* 0648-0376.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations; individuals or households; and State, Local, or Tribal government.

*Estimated Number of Respondents:* 1,272.

*Estimated Time Per Response:* 6,634 hours for a business plan, 4 hours for a referenda vote, 4 hours for an invitation to bid, 10 minutes to submit a fish ticket, 2 hours for a monthly buyer

report, 4 hours for an annual buyer report, 2 hours for a seller/buyer report, 270 hours for a state approval of plans and amendments to state fishery management plan, and 1 hour for advising of any holder or owner claims that conflict with accepted bidders' representations about reduction permit ownership or reduction vessel ownership.

*Estimated Total Annual Burden Hours:* 37,119.

*Estimated Total Annual Cost to Public:* \$6,000.

#### IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 4, 2002.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02-777 Filed 1-10-02; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 010702A]

#### Proposed Information Collection; Comment Request; Highly Migratory Species Observer Notification Requirements

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506 (c)(2)(A)).

**DATES:** Written comments must be submitted on or before March 12, 2002.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers at the National Marine Fisheries Service (NMFS), Highly Migratory Species Management Division, 1315 East West Highway, Silver Spring, MD 20910, or by e-mail at christopher.rogers@noaa.gov or phone at 301-713-2347.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Under current regulations NMFS may select for observer coverage any fishing trip by a vessel that has a permit for Atlantic Highly Migratory Species (HMS). NMFS will advise vessel owners in writing when their vessels have been selected. The owners of those vessels are then required to notify NMFS before commencing any fishing trip for Atlantic HMS. Such notification allows NMFS to arrange for observer placements and assignments. The estimated number of responses exceeds the number of respondents due to multiple trips taken within a particular season.

**II. Method of Collection**

Notification can be made by phone, fax, or letter.

**III. Data**

*OMB Number:* 0648-0374.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Estimated Number of Respondents:* 212.

*Estimated Time Per Response:* 2 minutes.

*Estimated Total Annual Burden Hours:* 295.

*Estimated Total Annual Cost to Public:* \$4,468.

**IV. Request for Comments**

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 4, 2002.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02-781 Filed 1-10-02; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 010702B]

**Proposed Information Collection; Comment Request; NMFS Alaska Region Vessel Monitoring System (VMS) Program**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506 (c)(2)(A)).

**DATES:** Written comments must be submitted on or before March 12, 2002.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the information collection instrument(s) and instructions should

be directed to Patsy A. Bearden, F/ AKR2, P.O. Box 21668, Juneau, AK 99802-1668 (telephone 907-586-7008).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

As required in the reasonable and prudent measures in the Endangered Species Act, Section 7 biological opinion on the effects of the Bering Sea and Aleutian Islands and Gulf of Alaska pollock, Atka mackerel, and Pacific cod fisheries on the endangered Steller sea lions, National Marine Fisheries Service (NMFS) has implemented changes to information collected from fishery participants. Any vessel that is registered for directed fishing for Pacific cod, pollock, and Atka mackerel in the exclusive economic zone off Alaska must install a vessel monitoring system (VMS) unit and operate the VMS while directed fishing for each of the species. The VMS unit automatically transmits location information every 20 minutes. NOAA uses the information for determining vessel locations and enforcing the closure of areas of critical habitat. Participants must also fax NOAA a check-in report when a VMS unit has been installed.

**II. Method of Collection**

The position reports are electronic and automatic. Check-in reports must be faxed.

**III. Data**

*OMB Number:* 0648-0445.

*Form Number:* None.

*Type of Review:* Regular submission.

*Estimated Number of Respondents:* 539.

*Affected Public:* Business or other for-profit organizations.

*Estimated Time Per Response:* 6 hours to install a VMS, 4 hours per year to maintain a VMS, 5 seconds for an automated position report, and 12 minutes to fax a check-in report.

*Estimated Total Annual Burden Hours:* 13,044.

*Estimated Total Annual Cost to Public:* \$811,000.

**IV. Request for Comments**

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

97-453, 99-659, 101-627, 102-251, 104-297

**(b) DISCRETIONARY PROVISIONS.**--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to--

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]\* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]\*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account--

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;



(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; and

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

## Sec. 971. Definitions

For the purpose of this chapter -

- (1) The term "Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.
- (2) The term "Commission" means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.
- (3) The term "conservation recommendation" means any recommendation of the Commission made pursuant to Article VIII of the Convention and acted upon favorably by the Secretary of State under section [971c](#)(a) of this title.
- (4) The term "Council" means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.
- (5) The term "exclusive economic zone" means an exclusive economic zone as defined in section [1802](#) of this title.
- (6) The term "fishing" means the catching, taking, or fishing for or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any activities in support thereof.
- (7) The term "fishing vessel" means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.
- (8) The term "Panel" means any panel established by the Commission pursuant to article VI of the Convention.
- (9) The term "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the

United States.

- (10) The term "Secretary" means the Secretary of Commerce.
- (11) The term "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

## Sec. 971a. Commissioners

- (a) Appointment and number; selection of Chairman; rules of procedure; term
  - (1) The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President. Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. Individuals serving as such Commissioners shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter [81](#) of title 5 and chapter [171](#) of title 28. The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.
  - (2) Of the Commissioners appointed under paragraph (1) who are not governmental employees -
    - (A) one shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and
    - (B) one shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.
  - (3)
    - (A) The term of a Commissioner shall be three years.
    - (B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than two consecutive terms as a Commissioner.
- (b) Alternate Commissioners

The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to section [971b](#) of this title, all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.
- (c) Compensation

The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners

or Alternate Commissioners.

- (d) Travel expenses
  - (1) The Secretary of State shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections [5701](#), [5702](#), 5704 through 5708, and 5731 of title 5.
  - (2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.

**Sec. 971b. Advisory committee**

- (a) There is established an advisory committee which shall be composed of -
  - (1) not less than five nor more than twenty individuals appointed by the United States Commissioners who shall select such individuals from the various groups concerned with the fisheries covered by the Convention; and
  - (2) the chairmen (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils established under section 302(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)). Each member of the advisory committee appointed under paragraph (1) shall serve for a term of two years and shall be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections [5701](#), [5702](#), 5704 through 5708, and 5731 of title 5.
- (b)
  - (1) A majority of the members of the advisory committee shall constitute a quorum, but one or more such members designated by the advisory committee may hold meetings to provide for public participation and to discuss measures relating to the United States implementation of Commission recommendations.
  - (2) The advisory committee shall elect a Chairman for a 2-year term from among its members.
  - (3) The advisory committee shall meet at appropriate times and places at least twice a year, at the call of the Chairman or upon the request of the majority of its voting members, the United States Commissioners, the Secretary, or the Secretary of State. Meetings of the advisory committee, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.
  - (4)
    - (A) The Secretary shall provide to the advisory committee in a timely manner such administrative and technical support services as are necessary for the effective functioning of the committee.
    - (B) The Secretary and the Secretary of State shall furnish the advisory committee

with relevant information concerning fisheries and international fishery agreements.

- (5) The advisory committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the Convention. The advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures.
- (6) The advisory committee shall, to the maximum extent practicable, consist of an equitable balance among the various groups concerned with the fisheries covered by the Convention and shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

**Sec. 971b-1. Species working groups**

The United States Commissioners may establish species working groups for the purpose of providing advice and recommendations to the Commissioners and the advisory committee on matters relating to the conservation and management of any highly migratory species covered by the Convention. Any species working group shall consist of no more than seven members of the advisory committee and no more than four scientific or technical personnel, as considered necessary by the Commissioner.



**Sec. 971c. Authority of Secretary of State; cooperative enforcement agreements**

- (a) Recommendations from Commission

The Secretary of State is authorized to receive on behalf of the United States, reports, requests, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, with the concurrence of the Secretary and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, is authorized to take appropriate action on behalf of the United States with regard to recommendations received from the Commission pursuant to article VIII of the Convention. The Secretary and, when appropriate, the Secretary of the department in which the Coast Guard is operating, shall inform the Secretary of State as to what action he considers appropriate within five months of the date of the notification of the recommendation from the Commission, and again within forty-five days of the additional sixty-day period provided by the Convention if any objection is presented by another contracting party to the Convention, or within thirty days of the date of the notification of an objection made within the additional sixty-day period, whichever date shall be the later. After any notification from the Commission that an objection of the United States is to be considered as having no effect, the Secretary shall inform the Secretary of State as to what action he considers appropriate within forty-five days of the sixty-day period provided by the Convention for reaffirming objections. The Secretary of State shall take steps under the Convention to insure that a recommendation pursuant to article VIII of the Convention does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale in terms of their effect upon the success of the conservation program, unless he determines, with the concurrence of the Secretary, and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, that the purposes of the Convention would be served by allowing a recommendation to take effect for the United States at some earlier time.

- (b) Enforcement agreements

The Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, is authorized to enter into agreements with any contracting party, pursuant to paragraph 3 of article IX of the Convention, relating to cooperative enforcement of the provisions of the Convention, recommendations in force for the United States and such party or parties under the Convention, and regulations adopted by the United States and such contracting party or parties pursuant to recommendations of the Commission. Such agreements may authorize personnel of the United States to enforce measures under the Convention and under regulations of another party with respect to persons under that party's jurisdiction, and may authorize personnel of another party to enforce measures under the Convention and under United States regulations with respect to persons subject to the jurisdiction of the United States. Enforcement under such an agreement may not take place within the territorial seas or exclusive economic zone of the United States. Such agreements shall not subject persons or vessels under the jurisdiction of the United States to prosecution or assessment of penalties by any court or

tribunal of a foreign country.

**Sec. 971d. Administration**

- (a) Regulations; cooperation with other parties to Convention; utilization of personnel, services, and facilities for enforcement

The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this chapter, and regulations issued pursuant thereto, except to the extent otherwise provided for in this chapter. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this chapter, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the exclusive economic zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Director of the Office of Personnel Management.

- (b) Primary enforcement responsibility

Enforcement activities at sea under the provisions of this chapter for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

- (c) Regulations and other measures to carry out Commission recommendations

- (1)

- (A) Upon favorable action by the Secretary of State under section [971c](#)(a) of this title on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.
- (B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations

made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

- (C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).
- (2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.
- (3) The regulations required to be promulgated under paragraph (1) of this subsection may -
  - (A) select for regulation one or more of the species covered by the Convention;
  - (B) divide the Convention waters into areas;
  - (C) establish one or more open or closed seasons as to each such area;
  - (D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;
  - (E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;
  - (F) require records of operations to be kept by any master or other person in charge of any fishing vessel;
  - (G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this chapter;
  - (H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the

Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section;

- (I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;
  - (J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and
  - (K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention; except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to the United States agreed to pursuant to a recommendation of the Commission.
- (4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit -
    - (A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and
    - (B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.
  - (5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation

by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

- (6) Identification and notification. -
  - (A) Not later than July 1, 1996, and annually thereafter, the Secretary, in consultation with the Secretary of State, the Commissioners, and the advisory committee, shall -
    - (i) identify those nations whose fishing vessels are fishing, or have fished during the preceding calendar year, within the convention area in a manner or under circumstances that diminish the effectiveness of a conservation recommendation;
    - (ii) notify the President and the nation so identified, including an explanation of the reasons therefor; and
    - (iii) publish a list of those Nations identified under clause
      - (i) notify the President and the nation so identified,
    - (B) In identifying those Nations, the Secretary shall consider, based on the best available information, whether those Nations have measures in place for reporting, monitoring, and enforcement, and whether those measures diminish the effectiveness of any conservation recommendation.
  - (7) Consultation. - Not later than 30 days after a Nation is notified under paragraph (6), the President may enter into consultations with the Government of that Nation for the purpose of obtaining an agreement that will -
    - (A) effect the immediate termination and prevent the resumption of any fishing operation by vessels of that Nation within the Convention area which is conducted in a manner or under circumstances that diminish the effectiveness of the conservation recommendation;
    - (B) when practicable, require actions by that Nation, or vessels of that Nation, to mitigate the negative impacts of fishing operations on the effectiveness of the conservation recommendation involved, including but not limited to, the imposition of subsequent-year deductions for quota overages; and
    - (C) result in the establishment, if necessary, by such Nation of reporting, monitoring, and enforcement measures that are adequate to ensure the effectiveness of conservation recommendations.
- (d) Recommended Commission actions regarding large-scale driftnet fishing and conservation of Atlantic swordfish
  - (1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of

State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section [3](#)(16) [11](#) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(16))) in the Convention area.

- (2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 3 months after each annual meeting of the Commission, shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.
-

## Sec. 971e. Violations

- (a) In general

It shall be unlawful -

- (1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section [971d](#) of this title; or
- (2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section [971d](#) of this title, without regard to the citizenship of the person or vessel which took the fish.

- (b) Failure to furnish returns, records, or reports

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished by such master or person.

- (c) Refusal of request to board and inspect vessel

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this chapter and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this chapter, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

- (d) Importation of ineligible species or species under investigation

It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section [971d](#)(c) or (d) (FOOTNOTE 1) of this title, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section [971d](#)(c) or (d) [11](#) of this title. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such



entry under the terms of section [971d](#)(c) or (d) [\[1\]](#) of this title.

- (e) Sanctions

The civil penalty and permit sanctions of section [1858](#) of this title are hereby made applicable to violations of this section as if they were violations of section [1857](#) of this title.

- (f) Forfeiture

All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

- (g) Applicability of other laws

All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.

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## Footnotes

[\[1\]](#) See References in Text note below.

## Sec. 971f. Enforcement

- (a) Particular powers

Any person authorized in accordance with the provisions of this chapter to enforce the provisions of this chapter and the regulations issued thereunder may -

- (1) with or without a warrant, board any vessel subject to the jurisdiction of the United States and inspect such vessel and its catch and, if as a result of such inspection, he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this chapter or any regulations issued thereunder, he may, with or without a warrant or other process, arrest such person;
- (2) arrest, with or without a warrant, any person who violates the provisions of this chapter or any regulation issued thereunder in his presence or view;
- (3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and
- (4) seize, whenever and wherever lawfully found, all fish taken or retained by a vessel subject to the jurisdiction of the United States in violation of the provisions of this chapter or any regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.

- (b) International enforcement

To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section [971c](#)(b) of this title for international enforcement, the duly authorized officials of such party shall have the authority to carry out the enforcement activities specified in subsection (a) of this section with respect to persons or vessels subject to the jurisdiction of the United States, and the officials of the United States authorized pursuant to this section shall have the authority to carry out the enforcement activities specified in subsection (a) of this section with respect to persons or vessels subject to the jurisdiction of such party, except that where any agreement provides for arrest or seizure of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a United States enforcement officer or another authorized United States official.

- (c) Bonds or stipulations

Notwithstanding the provisions of section [2464](#) of title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the

execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value at the time of seizure and the proceeds of such sale placed in the registry of the court pending judgment in the case.

**Sec. 971g. Cooperation in carrying out Convention**

- (a) Federal and State agencies; private institutions and organizations

The United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, may arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the Convention.

- (b) Scientific and other programs; facilities and personnel

All agencies of the Federal Government are authorized, upon the request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention.

- (c) Fishing operations and biological experiments

None of the prohibitions deriving from this chapter, or contained in the laws or regulations of any State, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the Convention.

- (d) State jurisdiction; preemption by Federal regulations

- (1) Except as provided in paragraph (2) of this subsection, nothing in this chapter shall be construed so as to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.
- (2) In the event a State does not request a formal hearing and after notice by the Secretary, the regulations promulgated pursuant to this chapter to implement recommendations of the Commission shall apply within the boundaries of any State bordering on any Convention area if the Secretary determines that any such State -
  - (A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this chapter, enacted laws or promulgated regulations which implement any such recommendation of the Commission within the boundaries of such State; or
  - (B) has enacted laws or promulgated regulations which (i) are less restrictive than the regulations promulgated pursuant to this chapter, or (ii) are not effectively enforced. If a State requests the opportunity for an agency hearing on the record, the Secretary shall not apply regulations promulgated pursuant to this chapter within that State's boundaries unless the hearing record supports a determination under paragraph (A) or (B). Such regulations shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures which are not less restrictive than such

regulations.

- (e) Continuing review of State laws and regulations

To insure that the purposes of subsection (d) of this section are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (d) of this section applies or may apply and the extent to which such laws and regulations are enforced.